IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIACTION NO.2564 OF 2003
IN
CRIMINAL APPEAL NO. OF 2003

Shri Vijay Mukutrao Wable ...Appelant/
Complainant

V/s

M/s. Kisan Engineering
Works & Ors. ...Respondents.

Mr. S.V. Marwadi, advocate for the appellant.

Mr. Rajesh A. More, advocate for respondent No.1.

Shri A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 29th September, 2004

P.C.

1. Leave granted.

2. Appeal is admitted.

3. Appeal is taken up for final hearing by consent of both the parties.

4. Heard the learned counsel appearing on behalf of the appellant and the learned Counsel appearing on behalf of the respondents.

5. Appellant is challenging the Order passed by the Judicial Magistrate, First Class, dismissing the

complaint for want of prosecution as the complainant and his advocate remained absent. It is submitted that the Trial Court had not fixed the matter for hearing and it was kept for dismissal. The learned Counsel appearing on behalf of the appellant submitted that the accused had remained present on number of occasions. However, the matter was adjourned since the accused remained absent and on one occasion warrant had to be issued to secure his presence. It is stated that the complainant was present on 27/12/2002 and since the Managing Director of the Company was changed, the representative of the Company could not attend on the next date.

6. The learned Counsel appearing on behalf of the respondent vehemently opposed the said submission made by the learned Counsel appearing on behalf of the appellant. He invited my attention to the roznama and pointed out the number of times the complainant and his advocate remained absent. He submitted that, thereafter, the matter was kept for dismissal and even, on that date, the complainant could not remain present. He submitted that, therefore, no sufficient cause has been shown by the applicant for restoration of the complaint.

7. I have perused the impugned order. The Trial Court has observed that the complainant has remained absent repeatedly and on that ground the complaint was dismissed for want of prosecution. Complainant was present on 27/12/2002, however, since the Managing Director of the Company was changed, the representative of the Company could not attend the next date. In my view this is a sufficient cause shown by the appellant for setting aside the order of dismissal of the complaint for want of prosecution.

8. The impugned order is, therefore, set aside. The matter is remanded back. J.M.F.C. to decide the appeal expeditiously and within a period of six months from today. Appellant undertakes to co-operate and attend the said case on each and every day. With these directions appeal is allowed.

V.M. KANADE, J.